

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 141

3
4
5
6
7
8
9
10 47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

11 AN ACT

12 RELATING TO STATE FINANCE; ALLOWING DIRECT INVESTMENT OF THE
13 SEVERANCE TAX PERMANENT FUND IN NEW MEXICO OWNED AND OPERATED
14 FINE ART AND FINE MUSICAL INSTRUMENT PRIVATE EQUITY FUNDS;
15 PROVIDING AND QUALIFYING LIMITATIONS; DECLARING AN EMERGENCY.

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. A new section of Chapter 7, Article 27 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] INVESTMENT IN FINE ART AND FINE MUSICAL
20 INSTRUMENT PRIVATE EQUITY FUNDS OWNED AND OPERATED IN NEW
21 MEXICO. --

22 A. No more than three percent of the market value
23 of the severance tax permanent fund may be invested in New
24 Mexico fine art and fine musical instrument private equity
25 funds.

. 155578. 2

underscored material = new
[bracketed material] = delete

1 B. Not more than sixty million dollars
2 (\$60,000,000) of the amount authorized for investment pursuant
3 to Subsection A of this section shall be invested in a fine art
4 private equity fund. Not more than forty millions dollars
5 (\$40,000,000) of the amount authorized for investment pursuant
6 to Subsection A of this section shall be invested in a fine
7 musical instrument private equity fund.

8 C. The state investment officer shall make
9 investments pursuant to this section only upon approval of the
10 state investment council after a review by the private equity
11 investment advisory committee. The state investment officer
12 may make an investment pursuant to this section only in a New
13 Mexico fine art or fine musical instrument private equity fund
14 that:

- 15 (1) is domiciled in New Mexico;
- 16 (2) is a reputable investment company with
17 sufficient expertise in fine art or fine musical instruments;
- 18 (3) has a majority of its employees domiciled
19 in New Mexico; and
- 20 (4) meets the following conditions:
- 21 (a) representations and warranties made
22 in the fund's private equity offering memorandum, its
23 subscription agreement and any other offering document have
24 been approved by the state investment council;
- 25 (b) the fund manager has provided to the

underscored material = new
[bracketed material] = delete

1 state investment council audited statements on a quarterly
 2 basis reflecting the activities of the fund; and

3 (c) all bank accounts of the fund
 4 manager, whether used for operations or asset acquisition,
 5 reside in banking institutions operating in New Mexico.

6 D. As used in this section:

7 (1) "New Mexico fine art private equity fund"
 8 means any limited partnership, limited liability company or
 9 corporation organized and operating in New Mexico that:

10 (a) has as its primary business activity
 11 the use of funds to acquire fine art, which is defined as art
 12 that has demonstrated that it has: 1) a secondary market; 2)
 13 either been sold at auction or been produced by an artist whose
 14 other work has sold at auction; and 3) a value not less than
 15 fifty thousand dollars (\$50,000) or more than five million
 16 dollars (\$5,000,000);

17 (b) will hold the fine art acquisitions
 18 for sale opportunistically, not later than ten years from the
 19 date of acquisition, with the objective of capital
 20 appreciation; and

21 (c) accepts investments only from
 22 accredited investors as that term is defined in Section 2 of
 23 the federal Securities Act of 1933, as amended, and rules
 24 adopted pursuant to that act; and

25 (2) "New Mexico fine musical instrument

. 155578. 2

underscored material = new
 [bracketed material] = delete

1 private equity fund" means any limited partnership, limited
2 liability company or corporation organized and operating in New
3 Mexico that:

4 (a) has as its primary business activity
5 the use of funds to acquire fine musical instruments, which are
6 defined as musical instruments that: 1) are stringed,
7 unfretted instruments; 2) were made in the seventeenth,
8 eighteenth or nineteenth century in Italy, France, Germany or
9 England; 3) have a maker whose instruments have sold at
10 auction; 4) have demonstrated that they have a secondary
11 market; and 5) have a value not less than one hundred thousand
12 dollars (\$100,000) or more than eight million dollars
13 (\$8,000,000);

14 (b) will hold these acquisitions for
15 sale opportunistically, not later than ten years from the date
16 of acquisition, with the objective of capital appreciation; and

17 (c) accepts investments only from
18 accredited investors as that term is defined in Section 2 of
19 the federal Securities Act of 1933, as amended, and rules
20 adopted pursuant to that section. "

21 Section 2. Section 7-27-5 NMSA 1978 (being Laws 1983,
22 Chapter 306, Section 7, as amended) is amended to read:

23 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND. -- The
24 severance tax permanent fund shall be invested for two general
25 purposes, to provide income to the fund and to stimulate the

1 economy of New Mexico, preferably on a continuing basis. The
 2 investments [~~in~~] pursuant to Sections 7-27-5.1 and 7-27-5.6
 3 NMSA 1978 shall be those intended to provide maximum income to
 4 the fund and shall be referred to as the market rate
 5 investments. The investments [~~permitted in~~] pursuant to
 6 Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13 through
 7 7-27-5.17, 7-27-5.22 and 7-27-5.24 through 7-27-5.26 NMSA 1978
 8 and the investments permitted for fine art and fine musical
 9 instruments provided in this 2005 act shall be those intended
 10 to stimulate the economy of New Mexico and shall be referred to
 11 as the differential rate investments. The prudent man rule
 12 shall be applied to the market rate investments, and the state
 13 investment officer shall keep separate records of the earnings
 14 of the market rate investments. All transactions entered into
 15 on or after July 1, 1991 shall be accounted for in accordance
 16 with generally accepted accounting principles. "

17 Section 3. EMERGENCY.--It is necessary for the public
 18 peace, health and safety that this act take effect immediately.

19 - 5 -
 20
 21
 22
 23
 24
 25